

## 3006.9000

### Subpart 3006.90—Competition Requirements For Personal Services Contracting

#### 3006.9000 Applicability (USCG).

Contracts awarded by the U.S. Coast Guard using the procedures in (HSAR) 48 CFR 3037.104-91 are expressly authorized under Section 1091 of Title 10 U.S.C. as amended, for the Coast Guard and are exempt from the competition requirements of (FAR) 48 CFR part 6.

### PART 3007—ACQUISITION PLANNING [RESERVED]

### PART 3008—REQUIRED SOURCES OF SUPPLIES AND SERVICES [RESERVED]

### PART 3009—CONTRACTOR QUALIFICATIONS

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AUTHORITY: 41 U.S.C. 418b (a) and (b).

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## 48 CFR Ch. 30 (10-1-05 Edition)

### Subpart 3009.1—Responsible Prospective Contractors

#### 3009.104-70 Prohibition on contracts with corporate expatriates.

#### 3009.104-71 General.

DHS may not enter into any contract with a foreign incorporated entity, which is treated as an inverted domestic corporation under subsection (b) of section 835 of the Homeland Security Act, Pub. L. 107-296.

#### 3009.104-72 Definitions.

As used in this subpart—

*Expanded Affiliated Group* means an affiliated group as defined in section 1504(a) of the Internal Revenue Code of 1986 (without regard to section 1504(b) of such Code), except that section 1504 of such Code shall be applied by substituting ‘more than 50 percent’ for ‘at least 80 percent’ each place it appears.

*Foreign Incorporated Entity* means any entity which is, or but for subsection (b) of section 835 of the Homeland Security Act, Pub. L. 107-296, would be, treated as a foreign corporation for purposes of the Internal Revenue Code of 1986.

*Inverted Domestic Corporation.* A foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

(1) The entity completes after the date of enactment of this Act, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership;

(2) After the acquisition at least 80 percent of the stock (by vote or value) of the entity is held—

(i) In the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation; or

(ii) In the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership; and

(3) The expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

*Person, domestic, and foreign* have the meanings given such terms by paragraphs (1), (4), and (5) of section 7701(a) of the Internal Revenue Code of 1986, respectively.

### 3009.104-73 Special rules.

The following special rules shall apply when determining whether a foreign incorporated entity should be treated as an inverted domestic corporation.

(a) *Certain stock disregarded.* For the purpose of treating a foreign incorporated entity as an inverted domestic corporation these shall not be taken into account in determining ownership:

(1) Stock held by members of the expanded affiliated group which includes the foreign incorporated entity; or

(2) Stock of such entity which is sold in a public offering related to the acquisition described in subsection (b)(1) of section 835 of the Homeland Security Act (the Act), Pub. L. 107-296.

(b) *Plan deemed in certain cases.* If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is after the date of enactment of this Act and which is 2 years before the ownership requirements of subsection (b)(2) of the Act are met, such actions shall be treated as pursuant to a plan.

(c) *Certain transfers disregarded.* The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

(d) *Special rule for related partnerships.* For purposes of applying subsection (b) to the acquisition of a domestic partnership, except as provided in regulations, all domestic partnerships which are under common control (within the meaning of section 482 of the Internal

Revenue Code of 1986) shall be treated as a partnership.

(e) *Treatment of certain rights.* (1) Certain rights shall be treated as stocks to the extent necessary to reflect the present value of all equitable interests incident to the transaction, as follows:

- (i) Warrants;
- (ii) Options;
- (iii) Contracts to acquire stock;
- (iv) Convertible debt instruments;
- (v) Others similar interests.

(2) Rights labeled as stocks shall not be treated as stocks whenever it is deemed appropriate to do so to reflect the present value of the transaction or to disregard transactions whose recognition would defeat the purpose of section 835 of the Act.

### 3009.104-74 Waiver.

(a) The Secretary shall waive subsection (a) of section 835 of Pub. L. 107-296 with respect to any specific contract if the Secretary determines that the waiver is required in the interest of homeland security, or to prevent the loss of any jobs in the United States or prevent the Government from incurring any additional costs that otherwise would not occur.

(b) Contractors shall submit waiver requests to the CPO. If a waiver is granted, a copy of the approved waiver shall be attached with the bid or proposal.

### 3009.104-75 Clause.

Insert the provision (HSAR) 48 CFR 3052.209-70, Prohibition on Contracts with Corporate Expatriates, in all solicitations and contracts.

## Subpart 3009.4—Debarment, Suspension, and Ineligibility

### 3009.470 Reserve Officer Training Corps and military recruiting on campus.

#### 3009.470-1 Definition.

*Institution of higher education* as used in this section, means an institution that meets the requirements of 20 U.S.C. 1001 and includes all subelements of such an institution.